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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JERMARR JERRELL SESSION,

Defendant and Appellant.

E064108

(Super.Ct.Nos. RIF1301236 &
RIF1302016)

OPINION

APPEAL from the Superior Court of Riverside County. Helios (Joe) Hernandez
and Mac R. Fisher, Judges.* Affirmed.

Nancy J. King, under appointment by the Court of Appeal, for Defendant and
Appellant.

* Judge Hernandez granted the prosecution's motion for consolidation. (See part III, *post.*) Judge Fisher presided over the trial and made all of the other challenged rulings. (See parts IV and V, *post.*)

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, and Peter Quon, Jr. and Karl T. Terp, Deputy Attorneys General, for Plaintiff and Respondent.

In January 2013, defendant ran from the police; while running, he ditched a gun.

In March 2013, after an argument with rival gang members, defendant committed a drive-by shooting.

Defendant was found guilty of multiple crimes arising out of each incident. In this appeal, he contends:

1. The trial court erred by allowing the prosecution to consolidate the charges arising out of the January incident with the charges arising out of the March incident.
2. There was insufficient evidence that the gun that defendant ditched was stolen.
3. The trial court erred by admitting evidence that one of the victims of the drive-by shooting was afraid of retaliation from defendant's brother.

Finding no error, we will affirm.

I

FACTUAL BACKGROUND¹

A. *January Crimes.*

On January 30, 2013, at approximately 8:00 p.m., police officers went to the home of one Craisean Evans, in Moreno Valley, to conduct a parole search. When they arrived,

¹ Because this is a gang-related case, we refer to victims and witnesses by first name and last initial only. (Cal. Rules of Court, rule 8.90(b)(4), (b)(10).)

they saw four Black men out in front. They ordered the men to stay still. Nevertheless, one of the men — who was wearing a black and red hat, a red shirt, and black pants — ran inside the house.

The officers went around to the back yard, where they found Evans. He had jumped out of a second-story window, injuring his foot.

The officers searched the house but found no one inside. One officer noticed a footprint by the back fence. When he looked over the fence, he saw the swimming pool of the neighboring house; a black and red hat was floating in the pool, and there was water on the pool deck.

About two blocks away, another officer found defendant hiding in some bushes. Defendant was wearing “dark clothing” and was “soaking wet.” The officer repeatedly ordered him, “Show me your hands.” Defendant did not comply; he yelled profanities instead. Only after the officer punched him in the face some six to eight times did defendant show both of his hands and submit to being handcuffed.

When the officers retrieved the hat, they saw a handgun at the bottom of the pool, so they retrieved that, as well. It was a .38-caliber with a distinctive purple marble grip featuring the Mexican flag.

At trial, Jesus P. identified the gun as his. He testified that it went missing after a break-in at his home in San Jacinto. He did not know defendant and did not give him permission to have the gun.

It was stipulated that defendant was a convicted felon.

B. *March Crimes.*

On March 20, 2013, around 2:20 p.m., Stewart C. was out in front of an apartment complex in Moreno Valley. He was waiting for his friend Gary H., who was coming to give him a ride and to sell him some marijuana.

While Stewart C. waited, he was “hanging out” with his brothers-in-law, Isaiah and David B., and their friend, nicknamed “Milky Way.” Both Isaiah B. and Milky Way were associated with a gang called East Side Lavish. Stewart C. himself, however, was not affiliated with any gang.

A black Dodge Avenger drove past. Milky Way “gang banged” on the car, meaning that he displayed the hand sign for his gang. The car made a U-turn and pulled up next to them. The driver was a light-skinned Black man with tattoos on his face and neck. The passenger in the back seat was also a light-skinned Black man, albeit darker than the driver.²

Isaiah B. and Milky Way both mentioned Lavish. The people in the car said they “ha[d] a problem” with Lavish. The passenger claimed Adrienne Avenue. The passenger then pulled out a gun and said, “If you got beef with them, you got beef with me.” The group argued for three to five minutes.

Meanwhile, Gary H. arrived. He was driving a green Honda Civic. His five-year-old nephew was in the back seat. Stewart C. walked around the black car and got into

² These were accurate descriptions of Evans and defendant, respectively. Stewart C. told the police, however, that the shooter had a “dark complexion.”

Gary H.'s car. As he did so, he looked at the passenger in the black car, who "duck[ed] down."

Gary H. drove a little way up the street, then pulled over to carry out the marijuana transaction. Just then, the black car pulled up alongside. The driver said, "Let them have it." The passenger stuck his arm out the window and fired at least eight shots at Gary H.'s car. No one was hit, although the five-year-old was left with scratches from the broken glass.

In photo lineups, Stewart C. identified defendant as the shooter and Evans as the driver. He also identified defendant as the shooter in court. A bystander who saw the shooting likewise identified defendant in a photo lineup and in court.³

On March 21, 2013 — the day after the shooting — a black Dodge Avenger was seen arriving at Evans's house. When the car left the house later that day, the police stopped it and searched it. In it, they found a receipt, in the name of Evans's girlfriend, for a stay at a Best Western motel from March 19-21. The receipt was signed by someone with the same initials as defendant — "J scribble, S scribble." Security video from the Best Western showed that defendant, Evans, and Evans's girlfriend were there together on the night of the shooting.

³ The bystander, however, told the police that it was someone in the green car who shot into the black car. She also told them she did not see the shooter. Moreover, she had testified in Evans's trial that she did not see the shooter.

Evans had a brother named James Major. On the night of March 23-24, 2013 — three days after the shooting — Major fired multiple shots at a woman in a vehicle. It turned out that the gun that Major used was also the gun that fired the shots in this case.

When Stewart C. testified in Evans's trial, he was facing a charge of assaulting a neighbor with a knife. After Evans's trial, he pleaded guilty, was placed on probation, and served seven months in jail. He had not been promised any leniency in exchange for his testimony.

Investigator Robert Navarrete testified as a gang expert. He identified the Edgemont Criminals as a Moreno Valley gang with approximately 100 members. Their turf includes Adrienne Avenue. They are rivals with a gang called Sex Cash Money, and therefore also with Lavish, which is a clique within Sex Cash Money.

The Edgemont Criminals have a number of common identifying signs or symbols. Their primary activity is the commission of crimes, including murders, shootings, robberies, and burglaries. As evidence of a pattern of criminal gang activity, the prosecution introduced evidence that:

1. Bomani Boyd, a member of the Edgemont Criminals, was convicted of attempted murder, a crime committed on September 9, 2011.
2. Djontrae Cole-Evans, a member of the Edgemont Criminals, was convicted of shooting at an occupied vehicle, a crime committed on January 22, 2012.

In Investigator Navarrete's opinion, defendant was an active member of the Edgemont Criminals. This opinion was based on, among other things, defendant's own

admissions to Investigator Navarrete and defendant's tattoos. Evans was also an active member of the Edgemont Criminals. Defendant had said that he considered Evans to be "one of his closest homeboys"

Gary H. was a member of the 4-Tray Gangster Crips. However, as far as Investigator Navarrete knew, the 4-Tray Gangster Crips were not the rivals of any Moreno Valley gang.

In response to a hypothetical question incorporating the facts of both the January incident and the March incident, Investigator Navarrete opined that "it's a classic gang case" and "it has several benefits to the gang."

Investigator Navarrete also testified that a gang may have a "hood gun" — a gun, often acquired illegally, that is owned in common and "passed around from member to member."

II

PROCEDURAL BACKGROUND

After a jury trial, defendant was found guilty of two counts arising out of the January incident:

Count 1: Unlawful possession of a firearm. (Pen. Code, § 29800, subd. (a)(1).)

Count 2: Receiving stolen property. (Pen. Code, § 496, subd. (a).)⁴

⁴ The trial court granted a motion for acquittal (Pen. Code, § 1118.1) on gang enhancements to counts 1 and 2.

It also dismissed count 3, which charged active gang participation in January 2013 (Pen. Code, § 186.22, subd. (a)). (Pen. Code, § 995.)

He was also found guilty of five counts arising out of the March incident:

Count 4: Attempted willful, deliberate, and premeditated murder (Pen. Code, §§ 187, subd. (a), 664, subd. (a)), with an enhancement for personally and intentionally discharging a firearm (Pen. Code, § 12022.53, subd. (c)) and a gang enhancement (Pen. Code, § 186.22, subd. (b)).

Count 5: Attempted willful, deliberate, and premeditated murder, with an enhancement for personally and intentionally discharging a firearm and a gang enhancement.

Count 6: Discharging a firearm at an inhabited house or occupied vehicle (Pen. Code, § 246), with a gang enhancement.

Count 7: Active gang participation.

Count 8: Unlawful possession of a firearm.

Defendant was sentenced to a total of 73 years 4 months to life in prison, along with the usual fines, fees, and miscellaneous sentencing orders.

III

JOINDER OF THE JANUARY COUNTS WITH THE MARCH COUNTS

Defendant contends that the trial court erred by allowing the prosecution to consolidate the January counts with the March counts.

A. *Additional Factual and Procedural Background.*

Originally, the prosecution filed two separate informations, one charging defendant with crimes committed in January 2013 (case No. RIF1302016) and one

charging him with crimes committed in March 2013 (case No. RIF1301236). Before trial, however, the prosecution filed a motion to consolidate the two cases.

Defense counsel argued, among other things, that the January case was stronger than the March case, because in the March case, defendant had been identified by law enforcement officers who were familiar with him, whereas in the January case, there were “serious identification . . . issues.” The prosecutor responded that evidence in the two cases would be cross-admissible, due to the gang issues. The trial court granted the motion; it found that, “on balance, it is not unfair to combine these cases.”

B. *Discussion.*

By statute, counts may be joined if they are “connected together in their commission” or if they are “of the same class” (Pen. Code, § 954.) However, even if counts are properly joined under this standard, the trial court has discretion to sever them “in the interests of justice and for good cause shown” (*Ibid.*)

““Refusal to sever may be an abuse of discretion where (1) evidence of the crimes to be jointly tried would not be cross-admissible in separate trials; (2) certain of the charges are unusually likely to inflame the jury against the defendant; (3) a ‘weak’ case has been joined with a ‘strong’ case or with another ‘weak’ case, so that the ‘spillover’ effect of aggregate evidence on several charges might well alter the outcome of some or all of the charges; and (4) any one of the charges carries the death penalty or joinder of them turns the matter into a capital case.” [Citation.]” (*People v. Landry* (2016) 2 Cal.5th 52, 77.)

“‘[B]ecause consolidation or joinder of charged offenses ordinarily promotes efficiency, that is the course of action preferred by the law.’ [Citation.]” (*People v. Armstrong* (2016) 1 Cal.5th 432, 455.) “‘[T]he burden is on the party seeking severance to clearly establish that there is a substantial danger of prejudice requiring that the charges be separately tried.’ [Citation.]” (*Ibid.*)

“When charges are properly joined, a “‘defendant must make a clear showing of prejudice to establish that the trial court abused its discretion in denying defendant’s severance motion.’” [Citation.] That is, defendant must demonstrate the denial of his motion exceeded the bounds of reason.’ [Citation.]” (*People v. Landry, supra*, 2 Cal.5th at p. 77.)

“Even if a defendant fails to demonstrate the trial court’s joinder ruling was an abuse of discretion when it was made, reversal may nonetheless be required if the defendant can demonstrate that ‘the joint trial resulted in such gross unfairness as to amount to a due process violation.’ [Citation.]” (*People v. Landry, supra*, 2 Cal.5th at p. 77.)

First, defendant argues that the crimes were not eligible for joinder under Penal Code section 954. However, the unlawful possession of a firearm charge in count 1 and the unlawful possession of a firearm charge in count 8 were of the same class — in fact, they were the same offense. (See *People v. Soper* (2009) 45 Cal.4th 759, 771 [two murders were crimes of the same class].) The gang participation charge in count 3

(although later dismissed) and the gang participation charge in count 7 were likewise the same.

Counts 1 and 3 were connected in their commission with the other January crime (count 2, receiving stolen property), because they all arose out of defendant's possession of the same gun. By the same token, counts 7 and 8 were connected in their commission with the other March crimes (counts 4 and 5, attempted murder, and count 6, discharging a firearm), because they all arose out of the same drive-by shooting.

Defendant claims that count 8, charging unlawful possession of a firearm in March, was a mere "afterthought" to the other March charges. However, we know of no authority for an "afterthought" exception to Penal Code section 954. (See *People v. Koontz* (2002) 27 Cal.4th 1041, 1075.)

Defendant does *not* argue that every count had to be either of the same class as or else connected in its commission with every other count — e.g., that count 2 (possession of stolen property) had to be of the same class as or connected in its commission with count 4 (attempted murder). We deem any such contention forfeited. If only out of an excess of caution, however, we note that this is not the law. It was sufficient that each count was of the same class as or connected in its commission with *some* other count. (*People v. Merriman* (2014) 60 Cal.4th 1, 37 [it was irrelevant that being under the influence count was not directly connected to murder count, because murder count was connected to evading arrest count and evading arrest count was connected to being under the influence count]; see also *People v. Koontz*, *supra*, 27 Cal.4th at pp. 1074-1075.)

Second, defendant argues that joinder was unfairly prejudicial. We may assume, without deciding, that the evidence of the crimes was not cross-admissible. “But “cross-admissibility is not the sine qua non of joint trials.” [Citation.]” (*People v. Jones* (2013) 57 Cal.4th 899, 925.) “[T]he absence of cross-admissibility cannot alone establish the substantial prejudice necessary to make severance mandatory. [Citations.]” (*People v. Johnson* (2015) 61 Cal.4th 734, 751.)

Certainly the March case — including attempted murder, shooting at an occupied vehicle, and active gang participation — was more serious than the January case. Nevertheless, it was not unusually likely to inflame the jury against the defendant.

When the trial court ruled, the charges in the January cases were accompanied by gang enhancement allegations. The trial court granted a motion for acquittal on these allegations, but only after the close of the prosecution’s case. Thus, the jury would have become aware in any event that defendant was a member of a gang and that other members of his gang had committed attempted murder and shooting at an occupied vehicle.

The attempted murder was not particularly shocking. It was committed in hot blood, after Milky Way challenged defendant by throwing his gang sign, and after both Milky Way and Isaiah B. angrily confronted defendant. Despite the number of shots fired, no one was killed or even seriously injured.⁵

⁵ It could be argued that it was somewhat shocking that there was a small child in the car. However, there was no evidence that defendant knew the child was there. The prosecutor even conceded, in closing argument, “I got to be very clear about
[footnote continued on next page]

Even if the January crimes had been tried separately, the jury would still have learned that defendant was a member of a gang whose primary activities included murders and shootings, and that he was in unlawful possession of a gun that most likely was a “hood gun.” It required no great leap to conclude that he intended the gun to be used in murders and attempted murders, such as those of rival gang members, as well as in lesser violent crimes. The further fact that defendant himself did actually use the gun in an attempted murder was not markedly more inflammatory.

We also cannot say that the prosecution was allowed to bolster a weak case by joining a strong case.

Defendant claims the January case was the strong one. However, none of the officers identified defendant as the man who ran into the house. Somewhat to the contrary, while that man was wearing a red shirt and black pants, the officer who arrested defendant could testify only that he was wearing “dark clothing”; his report did not mention a red shirt. Moreover, none of the officers ever saw defendant with the gun. Admittedly, the fact that defendant was soaking wet was strong circumstantial evidence that he had been in the pool. However, there could have been a second man who also jumped into the pool. Alternatively, defendant’s flight could have inspired Evans to throw the gun over the fence and into the pool.

[footnote continued from previous page]

something. Mr. Session is not charged with any crime against that child, because I cannot prove to you folks that Mr. Session knew a child was in that car.”

Moreover, the March case was not significantly weaker. Stewart C. identified defendant in a photo lineup as well as in court. He also identified Evans — who was defendant’s close friend and fellow gang member — even though he did not know either of them. A bystander identified defendant in a photo lineup as well as in court. Stewart C. was impeached somewhat by his original description of the shooter as having a “dark complexion.” Likewise, the bystander was impeached by her earlier statements that she did not see the shooter. Nevertheless, their identifications, made independently, strongly corroborated each other. The Best Western receipt, signed with defendant’s initials and found in the black Dodge Avenger, further connected defendant to the crime.

Defendant notes that there was no forensic evidence linking him to the shooting; the black Dodge Avenger was searched and tested for fingerprints, but nothing implicating defendant was found. He also suggests that Evans’s brother, James Major, was an alternative suspect. We recognize that, while the evidence of defendant’s identity in connection with the March case was strong, there was some room to argue that it was subject to reasonable doubt. However, as just discussed, this was also true with respect to the January case.⁶

⁶ In his reply brief, defendant claims that Stewart C. was further impeached by the fact that, according to the probation report, defendant has a facial tattoo, which Stewart C. failed to describe to police. Stewart C. specifically testified, however, that defendant did not have that tattoo in 2013. The bystander likewise testified that defendant had gotten “a tattoo to his face” since the shooting. Accordingly, in closing, defense counsel did not even bother to argue that the tattoo impeached Stewart C.

“In any event, as between any two charges, it always is possible to point to individual aspects of one case and argue that one is stronger than the other. A mere imbalance in the evidence, however, will not indicate a risk of prejudicial ‘spillover effect’ [Citation.]” (*People v. Soper, supra*, 45 Cal.4th at p. 781.) It was well within the trial court’s discretion to conclude that trying the two cases together was not likely to alter the outcome in either case.

IV

THE SUFFICIENCY OF THE EVIDENCE THAT THE JANUARY GUN WAS STOLEN

Defendant contends that there was insufficient evidence that the gun that he was in possession of in January was stolen.

A. *Additional Factual and Procedural Background.*

On direct examination, the prosecutor showed Jesus P. a photo of the gun (including the serial number) that defendant was in possession of on January 30, 2013 and asked:

“Q Now, back in December of 2013, did you own this firearm?

“A Yes.

“Q At some point, did that firearm go missing?

“A Yes. [¶] . . . [¶] . . .

“Q How did that firearm go missing?

“A My house was broken into.

“Q Do you recall what day it was in December?

“A It was before Christmas, couple days before Christmas . . .”

The prosecutor called Jesus P.’s attention to defendant, then asked:

“Q Do you know him?

“A No.

“Q Did you ever give him permission to possess, have, or receive your firearm . . . ?

“A No.”

On cross-examination, Jesus P. testified:

“Q . . . You said that you had this firearm in December of 2013; is that correct?

“A Yes.

“Q And December of 2013 you had that gun?

“A Yes.

“Q And it went missing in December of 2013?

“A Yes.

“Q Not 2014 — I’m sorry. Not 2012?

“A No.”

After the prosecution rested, defense counsel brought a motion for acquittal (Pen. Code, § 1118.1) on count 2 (receiving stolen property on January 30, 2013). He argued:

“There just is no evidence . . . that the gun was stolen on January 30th of 2013. Because I specifically asked. He said that it was stolen in December of 2013.”

The trial court denied the motion.

B. *Discussion.*

“In addressing a claim of insufficient evidence to support a conviction, this court “reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.”

[Citation.] ‘We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.’

[Citation.]” (*People v. Jackson* (2016) 1 Cal.5th 269, 345.) “[T]he relevant inquiry . . . is whether, in light of all the evidence, ‘any reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.’ [Citation.]” (*People v. Zaragoza* (2016) 1 Cal.5th 21, 44.)

In addressing a claim that the trial court erroneously denied a motion for acquittal, the same standard applies. (*People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1182, disapproved on other grounds in *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.)

“In order to establish the commission of the crime of receiving stolen property it must be established by substantial evidence (1) that the particular property was stolen, (2) that the accused received, concealed or withheld it from the owner thereof, and (3) that

the accused knew the property was stolen. [Citations.]” (*People v. Vann* (1974) 12 Cal.3d 220, 224.)

Here, Jesus P. testified that he owned the gun and that he never gave defendant permission to possess it. It follows that, *whenever* defendant was in possession of the gun, it was stolen. One inference that the jury could reasonably draw is that the gun was actually stolen sometime before January 30, 2013, but Jesus P. did not notice it was missing until after the break-in at his house in December 2013. Alternatively, another inference that the jury could reasonably draw is that Jesus P. was mistaken about the date of the break-in. “[J]urors could accept in part and reject in part any witness’s testimony [citation].” (*People v. Haynes* (1998) 61 Cal.App.4th 1282, 1294.)

In his reply brief, defendant argues that there was no evidence that Jesus P. owned the gun on January 30, 2013. However, once a status has been established, it may be presumed that it continues for a reasonable time. (Civ. Code, § 3547 [“[a] thing continues to exist as long as is usual with things of that nature”]; *San Francisco Breweries, Ltd. v. Superior Court* (1926) 80 Cal.App. 433, 440 [“it is a well-known disputable presumption of law that a status once established is presumed to remain until the contrary appears”]; see, e.g., *People v. Huntley* (1928) 93 Cal.App. 504, 505-506 [from evidence that defendant was married in 1914, it was inferable that he was still married in 1927]; *People v. Velasquez* (1924) 70 Cal.App. 362, 364, 366 [from evidence that defendant was born in Mexico, it was inferable that he was still an alien at the age of 21].) We see no reason why this principle should not work backward in time as well as

forward. After all, if Jesus P. did *not* own the gun in January 2013, defense counsel could have established that with one simple question. As he did not do so, it is reasonable to conclude that Jesus P. *did* own the gun in January 2013.

Finally, defendant argues (albeit briefly) that there was insufficient evidence that he knew the gun was stolen.

“Knowledge that property was stolen can seldom be proved by direct evidence and resort must often be made to circumstantial evidence.” (*People v. Vann, supra*, 12 Cal.3d at p. 224.) “[P]ossession of stolen property, accompanied by no explanation or an unsatisfactory explanation, or by suspicious circumstances, will justify an inference that the goods were received with knowledge that they had been stolen. Corroboration need only be slight and may be furnished by conduct of the defendant tending to show his guilt. [Citations.]” (*In re Richard T.* (1978) 79 Cal.App.3d 382, 388.)

Here, defendant was in possession of stolen property. Everything about his conduct displayed consciousness of guilt: when he saw the police, he ran, he discarded the gun in the pool, he hid in the bushes, and he resisted arrest. From this, it is fairly inferable that he knew that the gun was stolen.

Defendant argues that his consciousness of guilt can be sufficiently explained by the fact that he was a convicted felon, so that it was a crime for him simply to possess the gun. However, the jury was not required to find that this was, in fact, the sole explanation. Precisely because defendant was a convicted felon, he could not have lawfully purchased the gun. While it is not impossible that some fellow gang member

gave him the gun while falsely claiming to be the owner of it, it seems unlikely that gang members would be so scrupulous. Investigator Navarrete explained to the jury that a gang may have a “hood gun,” in part because “not a lot of gang members have guns registered to them; they obtain them illegally. . . . [B]y keeping the gun moving around, it prevents law enforcement from finding it.” He could not testify (and he did not) that defendant *in fact* knew that the gun had been obtained by theft. (*People v. Killebrew* (2002) 103 Cal.App.4th 644, 652-659 [gang expert cannot testify to gang member’s subjective knowledge or intent], disapproved on other grounds in *People v. Vang* (2011) 52 Cal.4th 1038, 1047, fn. 3.) Nevertheless, this was a reasonable inference from the evidence.

People v. Garcia (2008) 168 Cal.App.4th 261, while not precisely on point, is instructive. There, one of the defendants claimed that the trial court erred by admitting evidence that he engaged in a standoff with a SWAT team before he was arrested. (*Id.* at p. 283; see also *id.* at p. 272.) He argued, among other things, that this evidence was unduly prejudicial because, unbeknownst to the jury, he was a suspect in two unrelated shootings, as well as in the charged shooting; hence, the evidence would have misled the jury into believing that any consciousness of guilt that he showed in the standoff necessarily related to the charged shooting. (*Id.* at p. 284.)

The appellate court disagreed; it held that “consciousness of guilt evidence [is admissible] even though it could relate to one or more uncharged offenses” (*People v. Garcia, supra*, 168 Cal.App.4th at p. 284.) It explained: “[A] defendant who has

committed multiple offenses should not enjoy the benefit of the exclusion of relevant incriminating evidence that would be admissible against a ‘neophyte’ who has committed only one offense.” (*Id.* at p. 286.) It cited a number of out-of-state cases, including *Langhorne v. Commonwealth* (1991) 13 Va.App. 97 [409 S.E.2d 476], which it described as holding that a “defendant cannot avoid the inferences the fact finder may draw from his actions showing consciousness of guilt because other charges were pending against him and he may also have been evading those charges” (*People v. Garcia, supra*, at pp. 285-286.) *Garcia* thus supports the proposition that a jury can find that consciousness of guilt relates to a charged crime even when the defendant is suspected of other crimes.

Defendant relies instead on *People v. Brown* (1989) 216 Cal.App.3d 596. There, the defendant was charged with causing injury while evading an officer; this required proof that the pursuing officer’s vehicle had a red light that was turned on. (*Id.* at p. 599.) The officer in question testified that she had a switch that she could use to turn on a set of blue and white lights, or a set of red, white and blue lights; however, she did not remember which set she turned on. (*Ibid.*) The appellate court held that this was insufficient evidence to support the conviction. (*Id.* at p. 600.) It stated, “[W]here the proven facts give equal support to two inconsistent inferences, neither is established. [Citation.]” (*Ibid.*; accord, *People v. Allen* (1985) 165 Cal.App.3d 616, 626.)

“ . . . *Brown* involved speculation and correctly concluded that such speculation did not support the conviction[] [It] cannot be read to stand for the proposition that

a conviction must be reversed when reasonable but conflicting inferences could have been drawn by the trier of fact. Such a standard of review would be contrary to California Supreme Court precedent.” (*People v. Massie* (2006) 142 Cal.App.4th 365, 369.)

Moreover, here, the two possible inferences were not inconsistent. Defendant’s consciousness of guilt could relate to both his status as a convicted felon *and* to the gun’s status as stolen. Hence, *Brown* is not controlling. We follow *Garcia*.

We therefore conclude that there was sufficient evidence that defendant knew that the gun was stolen.

V

THE ADMISSION OF EVIDENCE THAT STEWART C. FEARED RETALIATION

Defendant contends that the trial court erred by admitting evidence that Stewart C. was afraid of retaliation from defendant’s brother.

A. *Additional Factual and Procedural Background.*

During Stewart C.’s direct examination, there was this exchange:

“[PROSECUTOR]: Is it fair to say that you were very reluctant to come to court today?

“A: Yes.

“[DEFENSE COUNSEL]: Objection. Relevance.

“THE COURT: Overruled.

“[PROSECUTOR]: Why were you reluctant to come to court?

“[STEWART C.]: Because my family’s safety.

“Q: And what specifically are you worried about your family’s safety?

“A: That his family members, whatever, are trying to retaliate.

“[DEFENSE COUNSEL]: Objection. Speculation, lack of personal knowledge.

“THE COURT: Let’s verify that this is his opinion, as opposed to having personal knowledge. Will you do that, please.

“Q: Why do you think – Where are you getting this information that you’re afraid of retaliation from Mr. Session’s family?

“A: Because when I was in jail, I was incarcerated, I was in there with his family.

“Q: Okay. And that causes you some concern for your safety?

“A: Yes.”

On cross-examination, Stewart C. explained that he had been in jail with defendant’s brother; he added that defendant’s brother had not actually threatened him or tried to intimidate him.

B. *Discussion.*

“““Evidence a witness is afraid to testify is relevant to the credibility of that witness and is therefore admissible. [Citations.] Testimony a witness is fearful of retaliation similarly relates to that witness’s credibility and is also admissible. [Citation.] It is not necessary to show threats against the witness were made by the defendant personally, or the witness’s fear of retaliation is directly linked to the defendant for the

evidence to be admissible.”” [Citations.]” (*People v. Williams* (2013) 58 Cal.4th 197, 270.)

Defendant concedes that evidence that a witness feels threatened “may be admissible to explain why [the] witness might not tell the truth” He argues, however, that here, Stewart C. gave unequivocally incriminating testimony, and therefore any evidence that he felt intimidated was irrelevant.

The admission of evidence that a witness feels threatened, however, has not been limited to cases in which the witness “goes south.” For example, in *People v. Warren* (1988) 45 Cal.3d 471, the Supreme Court held that the prosecutor could properly question a witness about whether he was afraid to testify (*id.* at p. 481), even though the court did not indicate that the witness’s testimony was in any way equivocal. (See *id.* at p. 477.) “A witness who testifies despite fear of recrimination of any kind by anyone is more credible because of his or her personal stake in the testimony.” (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1368, italics omitted.)

In *People v. Mendoza* (2011) 52 Cal.4th 1056, the Supreme Court held that the fact that two witnesses had received threats was admissible. (*Id.* at pp. 1087-1088.) Although they had both given testimony that was inconsistent with their previous statements, the defendant argued that the inconsistencies were minor. (*Id.* at p. 1087.) The Supreme Court responded: “[E]vidence that a witness is afraid to testify or fears retaliation for testifying is relevant to that witness’s credibility [citations]” (*Id.* at p. 1087.) It added, “[R]ecantation or inconsistent testimony is not a prerequisite for the

admission of evidence of a third party's threat or a witness's fear" (*Id.* at pp. 1087-1088, fn. omitted.)

Similarly, in *People v. Valdez* (2012) 55 Cal.4th 82, the defendant argued that evidence that a witness was afraid to testify was not admissible "unless the prosecution first "establish[es] the relevance of the witness's state of mind by demonstrating that the witness's [trial] testimony is inconsistent or otherwise suspect."'" (*Id.* at p. 135, brackets in original.) On the authority of *Mendoza*, the Supreme Court rejected this contention. (*Valdez, supra*, at pp. 135-136.) It held: "[I]n order to introduce evidence of the witnesses' fear, the prosecution was not required to show that their testimony was inconsistent with prior statements or otherwise suspect." (*Ibid.*, fn. omitted.)

Defendant asserts that "before evidence of witness threats may be admitted, the prosecutor should have some good-faith basis for a belief that the witness's testimony is being affected by the threats," citing *People v. Brooks* (1979) 88 Cal.App.3d 180 and *People v. Yeats* (1984) 150 Cal.App.3d 983. However, *Mendoza* expressly disapproved *Brooks* on this point. (*People v. Mendoza, supra*, 52 Cal.4th at p. 1086.) Likewise, *Valdez* expressly disapproved *Yeats*. (*People v. Valdez, supra*, 55 Cal.4th at p. 136, fn. 33.) We therefore conclude that the evidence that Stewart C. felt intimidated was admissible regardless of whether his testimony was affected.

Separately and alternatively, we note that there was evidence that Stewart C. had given inconsistent statements before trial. As defense counsel brought out on cross-examination, when the police questioned Stewart C., he did not tell them the whole truth.

He explained, “I was scared, I didn’t want nothing to do with it.” Thereafter, he added, “I started using my head and thinking about what could happen if I didn’t say anything. They could come back and kill me.” Defense counsel also brought out discrepancies between Stewart C.’s testimony at Evans’s trial and at this trial. Hence, even under defendant’s view of the law, the prosecution could properly rehabilitate Stewart C.’s credibility by bringing out the fact that he was afraid of retaliation.

VI

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

MILLER

J.

CODRINGTON

J.